

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

AMENDED PLAN OF LIQUIDATION DATED AUGUST 7, 2014

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, in his capacity as the Liquidator (the "Liquidator") of Noble Trust Company ("Noble Trust") and Aegean Scotia Holdings, LLC ("Aegean Scotia"), submits this Plan of Liquidation (the "Plan") with respect to Noble Trust and Aegean Scotia.

Preliminary Statement

The above-captioned proceeding is a statutory proceeding for the liquidation of a non-depository trust company brought by the Bank Commissioner for the State of New Hampshire pursuant to RSA 395:1 *et seq.* During the course of an investigation that has continued beyond the inception of this proceeding, the Liquidator concluded that, in its early days, Noble Trust invested a substantial portion of its clients' money in a Ponzi scheme. In order to hide its losses from its clients and regulators, Noble Trust itself became a Ponzi scheme. In such cases, the courts have consistently held that receivers in equity such as the Liquidator possess very broad powers and wide discretion to fashion equitable remedies in determining to whom and how the assets of the liquidation estate will be distributed. These equitable principles, coupled with the applicable provisions of RSA 395 and the Court's equitable powers granted by RSA 498:1, provide the framework upon which the Plan is based.

On June 21, 2010, the Liquidator filed a Plan of Liquidation. No hearing was held on the original plan and no order entered approving it. On June 26, 2014, the Court authorized the Liquidator to file a plan in this case and that order became final on July 28, 2014.

Section 1 – Definitions

1.1. “Administration Costs” means the costs and expenses incurred in connection with the liquidation of the estates of Noble Trust and Aegean Scotia (collectively “the Estates”) pursuant to RSA 395 and the common law, and includes, without limitation expenses incurred by the New Hampshire Banking Department during its examination of Noble Trust commencing on January 7, 2008, and its expenses incurred during the period between February 11 and March 27, 2008, when the Conservatorship Order was in effect.

1.2. “Allowed Claim” shall mean a Claim against Noble Trust (a) that is recommended for payment by the Liquidator, subject to the application of the Allowed Claim Distribution Formula, if applicable, and as to which no further approval in the Liquidation Proceeding is required prior to payment of the Claim, or (b) the nature, amount, enforceability and validity of which is determined or resolved pursuant to either (i) an agreement in accordance with applicable law between the Liquidator and the holder of such Claim and as to which no party in interest has interposed a timely objection, or (ii) the entry of a judgment, order or decree of the Liquidation Court which has become a Final Order.

1.3. “Allowed Class [X] Claim” means all Allowed Claims against Noble Trust having the priority of distribution of the assets of the Noble Trust estate set forth in the Plan for a particular class of Claims. An “Allowed Class Five (A) Claim” shall therefore mean an Allowed Claim entitled to the Distribution priority for Claims classified in Class Five (A) of the Plan.

1.4. “Allowed Claim Distribution Formula” shall mean the formula by which the Liquidator shall determine the amount of Distributions to be made on an Allowed Client Account Claim under the Plan as set forth in Section 2.4.5.

1.5. “Approval Order” means the order entered by the Liquidation Court approving the Plan of Liquidation and which shall have become a Final Order.

1.6. “Claim” means any assertion of a right to payment against Noble Trust or Aegean Scotia as evidenced by the filing of a Proof of Claim, whether as trustee, fiduciary, trust protector, investment manager, trust administrator, or in any other capacity, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; and any right to an equitable remedy against Noble Trust or Aegean Scotia for breach of performance, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.7. “Client” means a person or entity for whom Noble Trust was obligated to render trust, fiduciary, investment management, trust administration, trust protector or other similar services arising from the delivery to or administration by Noble Trust of any real or personal property for the direct or indirect benefit of such person.

1.8. “Client Account Claim” means a Claim asserted by a Client for the recovery of Property, to the extent of the value of such Property as calculated and deemed allowed under Section 2.2 of the Plan, but only to the extent that such Property is administered by the Liquidator and not abandoned pursuant to the Liquidation Order or under the Plan. Any Claim asserted by a Client and which is not a Client Account Claim, including Claims for equitable

relief or specific performance, shall be treated (to the extent allowed and not otherwise subordinated) as a general unsecured Claim under Class Five (B) of the Plan.

1.9. “Conservatorship” means the period between February 11, 2008, and the entry of the Liquidation Order on March 27, 2008, during which Noble Trust was under Conservatorship pursuant to the provisions of RSA 396.

1.10. “Distribution” and “Cash Available for Distribution” shall mean the aggregate proceeds of all Property sold or otherwise reduced to cash by the Liquidator and distributable or distributed to the holders of Allowed Claims under the Plan. “Cash Available for Distribution” with respect to Allowed Claims in Classes Two Through Seven shall be calculated net of the payment of (or reserve for) Allowed Class One Claims (Administration Costs).

1.11. “Effective Date” means the date on which the Approval Order becomes a Final Order.

1.12. “Final Order” means an order, judgment or decree of the Liquidation Court (or such other court of competent jurisdiction as to which the Liquidation Court has specifically permitted to proceed to enter such order) as to which any appeal that has been or may be taken has been finally resolved and as to which the time for further appeal has expired.

1.13. “General Unsecured Claim” means a Claim not specifically otherwise classified under the Plan.

1.14. “Insurance Policies” means any and all life insurance policies, annuities, and other similar contracts or instruments in which Noble Trust holds any legal or equitable interest, including but not limited to those issued for the direct or indirect benefit of a Client with respect to which Noble Trust provided trust or administrative services, whether such Insurance Policies are held in a trust, subtrust, or any other form of ownership.

1.15. “Lien Claim” means a Claim secured by a valid, perfected, unavoidable statutory lien afforded priority under New Hampshire law, and does not mean a security interest created by or arising under a contract.

1.16. “Liquidation Court” shall mean the Superior Court for Merrimack County, New Hampshire.

1.17. “Liquidation Order” means the Order issued by the Liquidation Court, dated March 27, 2008, in the Liquidation Proceeding, as clarified by the Liquidation Court’s Order, dated June 11, 2008.

1.18. “Liquidation Proceeding” means In the Matter of the Liquidation of Noble Trust Company, Docket No. 08-E-0053, and associated cases pending in the Liquidation Court.

1.19. “Plan” means this liquidating plan, as it may be amended or modified by the Liquidator from time to time as permitted herein.

1.20. “Property” means all legal or equitable interests in any real and personal property, including cash, securities, claims, contracts (including Insurance Policies), choses in action, and any other property of Noble Trust or in which Noble Trust (a) held any legal or equitable interest, whether as trustee, trust administrator, trust protector, or otherwise, or (b) exercised or could exercise any discretion, authority or control on behalf, at the direction or for the direct or indirect benefit of any of its clients, wherever located and by whomever held. “Property” also includes proceeds of any of the foregoing Property, as well as Settlement Deposits, proceeds of all other claims and causes of action asserted by the Liquidator under his statutory or equitable powers, subject to any requisite approvals by the Liquidation Court.

1.21. “Proof of Claim” and “Proof of Claim Process” mean, respectively, the Liquidation Court approved form of Claim or Claims filed by clients, creditors and others

purporting to have Claims against and from the estate of Noble Trust pursuant to the applicable provisions of RSA 395, and the process and procedure by which such Proofs of Claim are received, reviewed, considered, adjudicated, disputed, resolved and approved, consistent with this Plan, and under any Order establishing Claims procedures entered by the Liquidation Court.

1.22. “Settlement Deposits” means any and all funds deposited with the Liquidator or with the Clerk of the Liquidation Court in connection with any and all pending or approved settlement agreements between the Liquidator and any party in interest in the Liquidation Proceeding.

1.23. “Subordinated Allowed Claims” means an Allowed Claim upon which dividends or distributions under the Plan are payable at a priority junior to that in which the Allowed Claim would otherwise be payable under RSA 395:30 or any other otherwise applicable law or court order.

Section 2 – Classification of and Priority of Distribution on Claims

2.1. Classification of Claims. Consistent with both the distribution priorities expressed in RSA 395:30, principles of equity, and the Liquidator’s equitable powers, all Claims against Noble Trust are classified under the Plan as follows:

Class One: Administration Costs.

Class Two: Employee Claims: wage, salary and other Claims of Noble Trust employees, to the same extent that such Claims would be accorded priority under the applicable provisions of the United States Bankruptcy Code (the “Bankruptcy Code”). To the extent not otherwise subordinated or disallowed, any Claim held by a Noble Trust employee in excess of the amount entitled to priority under the Bankruptcy Code shall be treated as a Class Five (B) Claim.

Class Three: Deposit Claims. The Liquidator does not anticipate any Claims for “deposits” within the meaning of RSA 395:30 (III).

Class Four: Lien Claims: Claims secured by valid, perfected, unavoidable statutory liens accorded priority under New Hampshire law, but not by contractual security interests.

Class Five: All other Claims. Class Five consists of the following subclasses:

(A): Client Account Claims.

(B): General Unsecured Claims, but excluding Claims in the junior classes described below.

(C): Claims held by Insurers arising from Insurance Policies issued to or for the direct or indirect benefit of Client(s).

Class Six: Delayed Claims: Claims determined to be not timely filed in the Liquidation Proceeding.

Class Seven: Subordinated Claims: Claims determined by the Liquidation Court either under applicable law (including principles of equitable subordination), or in accordance with agreements between the Liquidator and the holder of a Claim in any of the above classes, to be entitled to a subordinated priority of Distributions under the Plan.

2.2. Calculation of Client Account Claims.

Each Client Account Claim will be calculated and deemed allowed by first calculating the total amount invested. This amount shall include, for each respective Client, all Property held, managed or administered by Noble Trust, and shall be determined solely by the Property’s market value as of the date that such Property was first delivered or conveyed to Noble Trust (or first administered or managed by Noble Trust), without interest, appreciation or depreciation

except, in the case of interest earned or income received, when it represents actual cash received by Noble Trust in connection with an investment. With respect to an Insurance Policy, the amount invested shall only include premiums to the extent that they were either paid directly by the individual whose life is insured under such Insurance Policy, or were contributed by such individual to a trust and paid directly by such trust to the Insurer that issued the Insurance Policy. The amount returned to a Client shall include all cash and non-cash payments or other transfers of value in respect of the Property, including principal and interest payments, taxes, securities, and any other property of value; and shall also include abandoned Property, and all setoffs, recoupments and counterclaims of the Liquidator against such Claim. The percentage of the investment that the amount distributed represents will then be calculated in order to determine when in the Plan's distribution scheme a Client is entitled to begin participating in distributions on a pro rata basis. Only when all other Client Accounts have reached the same or greater return of principal will a Client be permitted to participate in distributions. For purposes of these calculations, Claims held by Clients who are legally or beneficially related to each other (*e.g.*, minor dependents or related entities) shall be aggregated into a single Claim. Claims held by an adult Client, whether legally related to another adult Client or not, shall be treated as a separate Claim, except when two adults are married.

2.3. Property Dispositions. The Liquidator will sell, transfer, settle or otherwise dispose of Property in the following manner:

(A). **Real Estate.** Subject to Court approval, the Liquidator may sell any real estate in which Noble Trust holds an interest. Such sales may be conducted through such brokers or other professionals as the Liquidator deems appropriate. The Liquidator may also accept offers from private parties (including those claiming legal or equitable interests in a

parcel), and conduct advertised auctions of real property using licensed auctioneers. To the extent that such property is owned in co-tenancy with another party, the Liquidator may pay over to such co-tenant(s) their pro rata share of the net sale proceeds, as their interests may appear, upon the closing of such sale.

(B). **Insurance Policies.** The Liquidator will continue to negotiate the liquidation or disposition of Noble Trust's interests in Insurance Policies with the respective issuers thereof, either by surrender, rescission or such other manner as the Liquidator deems appropriate. In the event that the Liquidator is unable to negotiate such disposition with the applicable insurer, the Liquidator may seek an order compelling the surrender, rescission or other disposition of such Insurance Policy, or take such other action with respect to such Insurance Policy as the Liquidator deems appropriate under the Plan.

(C). **Other Personal Property.** The Liquidator may sell any other personal property in which Noble Trust holds an interest, such as marketable and non-marketable securities; secured and unsecured promissory notes, furniture and fixtures, equipment, accounts, and intangibles. Such sales may be conducted in any manner that the Liquidator deems reasonable, provided, however, that the sale of any item for in excess of \$50,000 shall be subject to Court approval.

(D). **Abandonment.** The Liquidator may abandon his interest in any property of the liquidation estate, including Property, that is burdensome to the estate or is of inconsequential value to the estate.

2.4. Distributions on Claims. The Liquidator shall continue to pay Administration Costs in the ordinary course of administration of this estate, subject to final approval of the Liquidation Court and consistent with the provisions of RSA 395. As soon as practicable after

the Effective Date, the Liquidator shall have the authority and the discretion, but is not required, to commence to pay Distributions from Cash Available for Distribution on all Allowed Claims in Classes One through Seven, consistent with the order and priority set forth in RSA 395:30 and as otherwise provided under the Plan. The Liquidator may also make subsequent distributions in the same manner to the extent that additional Property is liquidated or additional Cash Available for Distribution is generated after the Effective Date. If at the time the Liquidator makes a Distribution there is any Claim as to which a timely Proof of Claim has been submitted in this proceeding and such Claim is not an Allowed Claim, the Liquidator shall retain and set aside the funds that would be paid to the holder of the Claim from the Distribution if the Claim were Allowed until the earlier of (i) the date the Claim or any portion thereof becomes an Allowed Claim pursuant to a Final Order whereupon the funds set aside on account of the portion of the Claim that is an Allowed Claim will be paid to the holder of the Allowed Claim; and (ii) the date the Claim is disallowed by a Final Order, whereupon the funds set aside on account of the Claim will be retained by the Liquidator and distributed in accordance with the terms of this Plan.

2.4.1 Class One (Administration Costs). Class One Claims shall be paid in the ordinary course of the Liquidation Proceeding, subject to and consistent with the analogous provisions of RSA 395 and the common law. The Liquidator will establish a reserve of \$2 million from Cash Available for Distribution to fund ongoing Administration Costs, which reserve may be periodically replenished at the Liquidator's discretion.

2.4.2. Class Two (Allowed Employee Claims). All Allowed Employee Claims shall be paid within 30 days of the Claim becoming an Allowed Employee Claim.

2.4.3. Class Three (Deposit Claims). The Liquidator believes that there are no Allowed Class Three Claims.

2.4.4. Class Four (Allowed Lien Claims). Holders of Allowed Lien Claims shall receive a Distribution equal to the value of the collateral securing such Claim, such value to be determined as of the date upon which such collateral is to be surrendered or otherwise disposed of under the Plan, payable solely from the proceeds of the Property securing such Claim.

2.4.5. Class Five

(A). Allowed Client Account Claims. The timing and amount of any Distribution to the holder of an Allowed Client Account Claim shall be determined by the Allowed Claim Distribution Formula, which incorporates the “rising tide” method of distribution described in Section 2.2 above. The Allowed Claim Distribution Formula is as follows:

The Liquidator shall assign each Allowed Client Account Claim a percentage, derived from the ratio of the amount distributed to a client to the amount invested components of the Allowed Client Account Claim. For example, a Client whose total investment equals \$250,000 and distributions equal \$50,000 will have an assigned percentage of 20%. Assigned percentages shall be rounded up or down to a whole number; there shall be no fractional percentages. An Allowed Client Account Claim will begin to participate in Distributions under the Plan after all holders of Allowed Client Account Claims with lower designated percentages have received Distributions in an amount sufficient to raise their respective percentages to the designated percentage of that Allowed Client Account Claim. Allowed Client Account Claims that are entitled to participate in a Distribution pursuant to the Allowed Claim Distribution Formula shall do so on a *pro rata* basis.

(B). General Unsecured Claims. Allowed Class Five (B) Claims shall be paid on a *pro rata* basis after payment of (or adequate reserve for) Allowed Claims in Classes One through Five (A).

(C). Claims of Insurers. Allowed Claims of Insurers shall commence receiving *pro rata* Distributions once the holders of Allowed Class Five (A) and Five (B) Claims have been paid in full.

2.4.6. Class Six (Delayed Claims). Allowed Class Six Claims shall be paid on a *pro rata* basis after payment of (or adequate reserve for) Allowed Claims in Classes One through Five, such payments to be made on the same priority and the same manner as set forth above.

2.4.7. Class Seven (Subordinated Claims). Allowed Class Seven Claims shall be paid on a *pro rata* basis after payment of (or adequate reserve for) Allowed Claims in Classes One through Six.

Section 3 – Claims Against Aegean Scotia

3.1. Based on his review of the Proofs of Claims filed against Aegean Scotia, the Liquidator believes that such Claims are actually Claims against Noble Trust, and will be administered and treated as such under the Plan.

Section 4 – General Provisions

4.1. Claims Administration. Claims will be administered consistent with the provisions of RSA 395 and pursuant to the Liquidation Court’s claims administration order to be entered in connection with the Plan, as amended and in effect at the time a claim is administered.

4.2. Claims Resulting from Estate Recoveries. Unless waived, a Client from whom the Liquidator actually recovers money or property for the benefit of the Estates that had been previously distributed to the Client by Noble Trust shall be entitled to file a Proof of Claim for the amount so recovered within 28 days of the date of the payment of such recovery into the Estates. If the Liquidator's recovery is based on a judgment against such person or entity and any portion of such judgment remains unsatisfied, the Claim will be disallowed.

4.3. Prohibition Against Setoff. No holder of a Claim shall be permitted to exercise any right of setoff or recoupment against the Liquidator with respect to any Claim asserted by the Liquidator against such holder.

4.4 Time Bar to Cash Payments. If any distribution on account of a Claim is returned to the Liquidator as undeliverable or on notice from the holder of the Claim of a different address to which such distribution should be sent, or if a check in payment of the distribution on account of a Claim remains uncashed ninety (90) days after the date of such check, then the check will be voided, provided, however, that the Liquidator shall reissue such distribution if he receives, prior to the commencement of final distributions under the Plan, written notice from the holder of such Claim of a different address to which distributions should be sent. If the Liquidator does not receive any such notice prior to the commencement of final distributions under the Plan, then (a) such holder shall be entitled to no further distributions on account of such Claim and, notwithstanding Section 1.2 of the Plan, such Claim shall be treated as disallowed for purposes of computing distributions; and (b) the amount of the uncashed distributions to such holder shall become Cash Available for Distribution for purposes of computing the final distributions made by the Liquidator.

4.5. Exculpation and Release. Neither the Liquidator (including any and all of his predecessors or successors, as the case may be), nor the State of New Hampshire, nor any of their present and former respective agents, employees, consultants, professionals, representatives (all of whom are collectively referred to as the “Estate Representatives”) will have or incur any liability to any person or entity for any act taken or omitted to be taken in connection with or related to the Liquidation Proceeding or the Conservatorship, including, but not limited to the formulation, preparation, dissemination, negotiation, implementation, confirmation or consummation of the Plan, or any other act taken or omitted to be taken in connection with the Plan, the Liquidation Proceeding, the Conservatorship, or any other proceeding relating thereto (the “Exculpated Conduct”). Nothing herein shall be deemed to limit or abrogate any immunity conferred upon any of the Estate Representatives under applicable law.

4.6. Injunctive Provisions. The injunctive provisions of the Liquidation Order are continued and made permanent. Without limitation:

(A). All persons and entities holding Claims against Noble Trust shall be permanently enjoined and prohibited from recovering or attempting to recover any money or property in which Noble Trust or its estate has an interest, other than under the terms of the Plan.

(B). All persons and entities holding Claims against Aegean Scotia shall be permanently enjoined and prohibited from asserting any such Claims against Noble Trust or Aegean Scotia, and from attempting to recover any money or property from Noble Trust or Aegean Scotia in respect of such Claims.

(C). The period in which a challenge to any and all Insurance Policies may be brought, whether under the provisions of RSA 408:10 or any similar provision of any of the

Insurance Policies, shall continue to be tolled until such time as such Insurance Policy has been surrendered or otherwise disposed of under the Plan by a Final Order.

(D). All persons and entities are permanently enjoined from commencing, or continuing in any manner, any action or proceeding against any of the Estate Representatives, whether directly, derivatively, on account of or respecting any claim, debt, right, or cause of action based in whole or in part upon any Exculpated Conduct.

4.7. Retention of Powers of Liquidator. The Liquidator reserves and retains all of his rights and powers under RSA 395 and other applicable law in connection with his administration of the Liquidation Proceeding.

4.8. Retention of Jurisdiction. The Court shall retain exclusive jurisdiction to enforce the provisions of the Plan and all of the agreements attendant hereto or incorporated herein by reference, and to insure that the intent and purposes of the Plan are carried out and given effect. Without limiting the generality of the foregoing, the Court shall retain exclusive jurisdiction for the following purposes:

(A). To consider any modification or amendment to the Plan (including any of the agreements contemplated by, incorporated into, or attendant to the Plan); and

(B). To hear and determine:

- i. All controversies, suits and disputes, if any, as may arise in connection with the Proof of Claim Process or under any of the agreements contemplated by, incorporated into, or attendant to the Plan, until entry of a Final Order terminating the Liquidation Proceeding and discharging the Liquidator;

- ii. All controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan; and
- iii. All proceedings to enforce performance of the Plan, any and all agreements entered into between the Liquidator and any other party in interest against any person or party in interest, including without limitation, proceedings seeking injunctive relief in aid or compliance with the Plan and any of the agreements contemplated by, incorporated into, or attendant to the Plan.

4.9. Conclusion of Proceeding. At such time as the Liquidator believes that the Estates are fully administered, he shall petition the Liquidation Court for an Order discharging the Liquidator and concluding the Liquidation Proceeding upon such terms as the Liquidator deems just and appropriate.

Dated: August 7, 2014

Respectfully submitted,

GLENN A. PERLOW, BANK COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST
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